



RA9-97-020

PATENT

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: : Before the Examiner:
Walker et al. : Vu, T.

Serial No. 08/883,710 : Group Art Unit: 2152

Filed: June 27, 1997 :
: Intellectual Property Law
Title: COMMUNICATION NETWORK : IBM Corp.
HAVING ADJUSTABLE RESPONSE : Dept. 972/B656
TIMEOUTS AND THE METHOD : P.O. Box 12195
THEREFOR : Research Triangle Park, NC 27709

May 12, 2004

REPLY BRIEF

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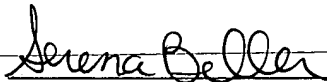
Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is being submitted in response to the Examiner's Answer dated March 31, 2004 (Paper No. 21), with a two-month statutory period for response set to expire on May 31, 2004.

CERTIFICATION UNDER 37 C.F.R. § 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on May 12, 2004.


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Serena Beller
(Printed name of person certifying)

I. RESPONSE TO EXAMINER'S ARGUMENTSA. Response to Examiner's argument as discussed in point B on page 10 of Paper No. 21.

Appellants respectfully assert that Ellis does not disclose "initiating operation of a timer with a first response time" as recited in claim 7. The Examiner cites column 5, lines 57-63 of Ellis as disclosing the above-cited claim limitation. Paper No. 21, page 10. Appellants respectfully traverse and assert that Ellis instead discloses that the maximum response time (MAXTIME) is set to some initial value. Hence, Ellis discloses setting the maximum time to receive a response after a message has been sent to a network device to a particular value. However, setting the maximum response time to a value is not the same as initiating operation of a timer as asserted by the Examiner. Paper No. 21, page 10. Instead, the maximum response time is a particular value used in determining if the time elapsed between sending a message and receiving a message exceeded that value. The maximum response time is not a timer. Thus, Ellis does not disclose all of the limitations of claim 7, and thus Ellis does not anticipate claim 7. M.P.E.P. §2131.

B. Response to Examiner's argument as discussed in point C on page 10 of Paper No. 21.

Appellants further assert that Ellis does not disclose "selectively incrementing the first response time when the first query response has been received" as recited in claim 7. The Examiner cites column 6, lines 36-37 of Ellis as disclosing the above-cited claim limitation. Paper No. 21, page 10. Appellants respectfully traverse and assert that Ellis instead discloses that if a response is received, the counter response number is incremented. Hence, Ellis discloses tracking the number of successful responses from the network device. However, tracking the number of successful responses from the network device is not the same as incrementing a response time. There is no time associated with the number of successful responses. Further, as stated in claim 7, the operation of the timer is initiated with a response time. If the Examiner is asserting that the counter response number is equivalent to the response time, then, the operation of the

timer should be initiated with the number of successful responses from the network device. However, it makes no sense to initiate the operation of the timer with the number of successful responses from the network device. Thus, Ellis does not disclose all of the limitations of claim 7, and thus Ellis does not anticipate claim 7. M.P.E.P. §2131.

C. Response to Examiner's argument as discussed in point D on pages 10-11 of Paper No. 21.

Appellants further assert that Ellis does not disclose "a timer for measuring a first amount of time between transmission of the first information frame and receipt of the first response, the timer being coupled to the interface means" as recited in claim 17. The Examiner cites a counter in Ellis which keeps track of the number of successful responses from the network device. Paper No. 21, page 11. However, a counter which keeps track of a particular number of successful responses is not the same as a timer measuring an amount of time. Further, Ellis does not disclose an interface means coupled to the counter that keeps track of the number of successful responses from the network device. Thus, Ellis does not disclose all of the limitations of claim 17, and thus Ellis does not anticipate claim 17. M.P.E.P. §2131.

Further, the Examiner has not particularly cited to any element in Ellis as disclosing an interface means coupled to a timer. The Examiner is reminded that the Examiner bears the initial burden and must submit objective evidence and not rely on his own subjective opinion in support of a *prima facie* case of anticipation. *In re Oetiker*, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992). Since the Examiner has not provided any evidence that Ellis discloses an interface means coupled to a timer, the Examiner has not presented a *prima facie* case of anticipation for rejecting claim 17. M.P.E.P. §2131.

D. Response to Examiner's argument as discussed in point F on page 11 of Paper No. 21.

Appellants further assert that Ellis does not disclose "incrementing an initial response time value by a timer resolution value, to form the response time value" as recited in claim 2 and similarly in claim 8. The Examiner cites column 6, lines 46-58 of Ellis as disclosing the above-cited claim limitation. Paper No. 21, page 11. The

Examiner further states that the sporadic delay time, as disclosed in Ellis, corresponds to the response time value. Paper No. 21, page 11. Appellants respectfully traverse and assert that Ellis instead discloses that by gradually increasing the number of retries when a network device does not respond has the advantage of reliably handling the case of a sporadic link. Ellis further discloses that the sporadic link is one which usually has a very small delay time but may on occasion have delays of 2 minutes or more. Hence, the sporadic link refers to the scenario of usually receiving a response within the expected time but on occasion receiving a response much longer than expected. Hence, the sporadic link is not related to a timer resolution value. Neither is a sporadic link used to increment an initial response time value. Thus, Ellis does not disclose all of the limitations of claims 2 and 8, and thus Ellis does not anticipate claims 2 and 8. M.P.E.P. §2131.

E. Response to Examiner's argument as discussed in point G on pages 11-12 of Paper No. 21.

Appellants further assert that Ellis does not disclose "wherein the initial response time value is incremented up to a maximum response time value" as recited in claim 3 and similarly in claim 3 and similarly in claim 16. The Examiner cites column 5, line 60 of Ellis as disclosing the above-cited claim limitation. Paper No. 21, page 12. Appellants respectfully traverse and assert that Ellis instead discloses setting the maximum response time (the maximum time to receive a response after sending a message) to an initial value, such as three seconds. There is no language in the cited passage of incrementing an initial response time value. Instead, Ellis discloses setting the maximum response time to an initial value. Thus, Ellis does not disclose all of the limitations of claims 3 and 16, and thus Ellis does not anticipate claims 3 and 16. M.P.E.P. §2131.

F. Response to Examiner's argument as discussed in point H on page 12 of Paper No. 21.

Appellants further assert that Ellis does not disclose "setting a transmit sequence value when the first frame of information is transmitted" as recited in claim 9. The

Examiner cites column 6, lines 5-10 of Ellis as disclosing the above-cited claim limitation. Paper No. 21, page 12. Appellants respectfully traverse and assert that Ellis instead discloses that if the elapsed time between sending a message and receiving a response (RESPONSETIME) is greater than the value of MAXTIME, then MAXTIME is set to twice RESPONSETIME. If not, then RETRYTIME is set to a weighted average of RETRYTIME and RESPONSETIME. Setting RETRYTIME to a weighted average is not the same as setting a transmit sequence value. Thus, Ellis does not disclose all of the limitations of claim 9, and thus Ellis does not anticipate claim 9. M.P.E.P. §2131.

Further, the Examiner must provide a basis in fact and/or technical reasoning to support the assertion that RETRYTIME is the same as a transmit sequence value as alleged by the Examiner. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). The Examiner must provide extrinsic evidence that must make clear that that RETRYTIME is the same as a transmit sequence value. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). Since the Examiner has not supported the assertion that RETRYTIME is the same as a transmit sequence value, the Examiner has not presented a *prima facie* case of anticipation for rejecting claim 9. M.P.E.P. §2131.

G. Response to Examiner's argument as discussed in point I on page 12 of Paper No. 21.

Appellants further assert that Ellis does not disclose "comparing the transmit sequence value and a receive sequence value when the first response is received" as recited in claim 9. The Examiner cites column 6, lines 5-10 of Ellis as disclosing the above-cited claim limitation. Paper No. 21, page 12. Appellants respectfully traverse. As stated above, Ellis instead discloses that if the elapsed time between sending a message and receiving a response (RESPONSETIME) is greater than the value of MAXTIME, then MAXTIME is set to twice RESPONSETIME. If not, then RETRYTIME is set to a weighted average of RETRYTIME and RESPONSETIME. Setting RETRYTIME to a weighted average is not the same as a transmit sequence value

or a receive sequence value. Thus, Ellis does not disclose all of the limitations of claim 9, and thus Ellis does not anticipate claim 9. M.P.E.P. §2131.

Further, the Examiner must provide a basis in fact and/or technical reasoning to support the assertion that RETRYTIME is the same as a transmit sequence value or a receive sequence value as alleged by the Examiner. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). The Examiner must provide extrinsic evidence that must make clear that RETRYTIME is the same as a transmit sequence value or a receive sequence value. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). Since the Examiner has not supported the assertion that RETRYTIME is the same as a transmit sequence value or a receive sequence value, the Examiner has not presented a *prima facie* case of anticipation for rejecting claim 9. M.P.E.P. §2131.

H. Response to Examiner's argument as discussed in point J on page 12 of Paper No. 21.

Appellants further assert that Ellis does not disclose "idling operation of the response timer when the transmit sequence value corresponds to the receive sequence value" as recited in claim 9. The Examiner cites column 5, line 60 of Ellis as disclosing the above-cited claim limitation. Paper No. 21, page 12. Appellants respectfully traverse and assert that Ellis instead discloses setting the maximum response time to an initial value. There is no language in the cited passage that discloses a transmit sequence value or a receive sequence value. Neither is there any language in the cited passage that discloses a response timer. Neither is there any language in the cited passage that discloses an idling operation of a timer. Neither is there any language in the cited passage that discloses an idling operation of the response timer when the transmit sequence value corresponds to the receive sequence value. Thus, Ellis does not disclose all of the limitations of claim 9, and thus Ellis does not anticipate claim 9. M.P.E.P. §2131.

The Examiner must provide a basis in fact and/or technical reasoning to support the assertion that setting the maximum response time to an initial value corresponds to

disclosing the above-cited claim limitation. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). The Examiner must provide extrinsic evidence that must make clear that setting the maximum response time to an initial value corresponds to disclosing the above-cited claim limitation. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). Since the Examiner has not supported the assertion that setting the maximum response time to an initial value corresponds to disclosing the above-cited claim limitation, the Examiner has not presented a *prima facie* case of anticipation for rejecting claim 9. M.P.E.P. §2131.

I. Response to Examiner's argument as discussed in point K on page 13 of Paper No. 21.

Appellants further assert that Ellis does not disclose "restarting operation of the response timer when the transmit sequence value differs from the receive sequence value" as recited in claim 10. The Examiner states:

Examiner points out the prior art disclose that the hub manager waits for the next contact attempt (or restarting operation) before making further adjustment which means if the next transmit sequence value is differ[ent] from the previous values (receive sequence value) and the value response is incremented [Ellis the hub manager does not receive response and timeout occurs, then the retry # is incremented, col 6 lines 30-45]. Paper No. 21, page 13.

While Ellis discloses that when hub manager 51 does not receive an acknowledgment of a network management data packet, hub manager 51 will wait a certain amount of time and then retry by sending another network management data packet (column 4, lines 47-50), there is no language in Ellis that discloses comparing the transmit sequence value with the receive sequence value. The Examiner must provide a basis in fact and/or technical reasoning to support the assertion that Ellis discloses comparing the transmit sequence value with the receive sequence value. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). The Examiner must provide extrinsic evidence that must make clear that Ellis discloses comparing the transmit sequence value with the receive sequence value. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). Since the

Examiner has not supported the assertion that Ellis discloses comparing the transmit sequence value with the receive sequence value, the Examiner has not presented a *prima facie* case of anticipation for rejecting claim 10. M.P.E.P. §2131.

Further, as understood by Appellants, the Examiner is asserting that incrementing the retry number corresponds to restarting the operation of the response timer. As stated above, Ellis discloses that the retry number stores the currently determined number of retries to be made before timing out. Column 5, lines 35-36. Storing a number of retries is not relating to tracking time. Hence, the retry number does not correspond to a timer. Further, there is no language in the cited passage that discloses restarting the operation of a timer. Thus, Ellis does not disclose all of the limitations of claim 10, and thus Ellis does not anticipate claim 10. M.P.E.P. §2131.

J. Response to Examiner's argument as discussed in point L on page 13 of Paper No. 21

Appellants further assert that Ellis does not disclose "selectively initializing a query timer with a maximum response time value" as recited in claim 11. The Examiner cites column 5, line 60 of Ellis as disclosing the above-cited claim limitation. Paper No. 21, page 13. Appellants respectfully traverse and assert that Ellis instead discloses setting the maximum response time to an initial value. Ellis discloses that the maximum response time corresponds to the maximum time to receive a response after sending a message. Column 5, lines 30-33. Ellis further discloses that the maximum response time is stored in a database, namely database 80. See Figure 3. Hence, Ellis discloses setting a value stored in a database which is not the same as initializing a timer with a value. Thus, Ellis does not disclose all of the limitations of claim 11, and thus Ellis does not anticipate claim 11. M.P.E.P. §2131.

K. Response to Examiner's argument as discussed in point M on pages 13-14 of Paper No. 21

Appellants further assert that Ellis does not disclose "selectively modifying the response-time-value to correspond to a residual time value remaining in a response timer

after the second amount of time has passed" as recited in claim 12. Appellants further assert that Ellis does not disclose "wherein the response time value is selectively modified to equal the residual time value plus a timer resolution value" as recited in claim 13. The Examiner states:

Examiner points out the prior art disclose that the hub manager waits for the next contact attempt (or restarting operation) before making further adjustment which means if the next transmit sequence value is differ[ent] from the previous values (receive sequence value) and the value response is incremented [Ellis the hub manager does not receive response and timeout occurs, then the retry # is incremented, col 6 lines 30-45]. Paper No. 21, pages 13-14.

As understood by the Appellants, the Examiner is asserting that incrementing the retry number corresponds to modifying the response time value to correspond to a residual time value remaining in a response timer after the second amount of time has passed. As stated above, Ellis discloses that the retry number stores the currently determined number of retries to be made before timing out. Column 5, lines 35-36. There is no language in the cited passage to suggest that incrementing the retry number corresponds to modifying the retry number to correspond to a residual time value remaining in a response timer. The Examiner must provide a basis in fact and/or technical reasoning to support such an assertion. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). Further, the Examiner must provide extrinsic evidence that must make clear that Ellis discloses that incrementing the retry number corresponds to modifying the retry number to correspond to a residual time value remaining in a response timer. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). Since the Examiner has not supported the assertion that Ellis discloses that incrementing the retry number corresponds to modifying the retry number to correspond to a residual time value remaining in a response timer, the Examiner has not presented a *prima facie* case of anticipation for rejecting claim 12. M.P.E.P. §2131.

Further, there is no language in the cited passage to suggest that incrementing the retry number corresponds to modifying the retry number to equal a residual time value

plus a timer resolution value. The Examiner must provide a basis in fact and/or technical reasoning to support such an assertion. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). Further, the Examiner must provide extrinsic evidence that must make clear that Ellis discloses that incrementing the retry number corresponds to modifying the retry number to equal a residual time value plus a timer resolution value. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). Since the Examiner has not supported the assertion that Ellis discloses that incrementing the retry number corresponds to modifying the retry number to equal a residual time value plus a timer resolution value, the Examiner has not presented a *prima facie* case of anticipation for rejecting claim 13. M.P.E.P. §2131.

L. Response to Examiner's argument as discussed in point O on page 14 of Paper No. 21

Appellants further assert that Ellis does not disclose "means for incrementing the response timer value by a preselected time period in response to the first amount of time" as recited in claim 19. The Examiner cites column 6, lines 5-10 of Ellis as disclosing the above-cited claim limitation. Paper No. 21, page 14. Appellants respectfully traverse and assert that Ellis instead discloses that if the elapsed time between sending a message and receiving a response (RESPONSETIME) is greater than the value of MAXTIME, then MAXTIME is set to twice RESPONSETIME. If not, then RETRYTIME is set to a weighted average of RETRYTIME and RESPONSETIME. Setting RETRYTIME to a weighted average is not the same as incrementing a value by a preselected time period. In fact, RETRYTIME is decreased by setting RETRYTIME to a weighted average of RETRYTIME and RESPONSETIME when RESPONSETIME is less than MAXTIME. Thus, Ellis does not disclose all of the limitations of claim 19, and thus Ellis does not anticipate claim 19. M.P.E.P. §2131.

M. Other matters raised by the Examiner.

All other matters raised by the Examiner have been adequately addressed above and in Appellants' Appeal Brief and in Appellants' Supplemental Appeal Brief and therefore will not be addressed herein for the sake of brevity.

II. CONCLUSION

For the reasons stated in Appellants' Appeal Brief and in Appellants' Supplemental Appeal Brief and noted above, Appellants respectfully assert that the rejections of claims 1-19 are in error. Appellants respectfully request reversal of the rejections and allowance of claims 1-19.

Respectfully submitted,

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